

**BEFORE THE KANSAS WORKERS COMPENSATION APPEALS BOARD**

**SARA TORRES**

Claimant

V.

**TYSON FRESH MEATS, INC.**

Self-Insured Respondent

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CS-00-0443-742

AP-00-0451-633

**ORDER**

The self-insured respondent, Tyson Fresh Meats, Inc. (Tyson), through Gregory Worth, requested review of Administrative Law Judge Pamela Fuller's preliminary hearing Order dated June 16, 2020. Scott Mann represents the claimant, Sara Torres (Torres).

**RECORD AND STIPULATIONS**

The record consists of two preliminary hearing transcripts dated September 17, 2019, and June 16, 2020, all exhibits attached to such transcripts, the pleadings and the case file. Any stipulations are adopted.

**ISSUE**

Does the Board have jurisdiction to review a preliminary order which does not rule on the prevailing factor requirement?

**FINDINGS OF FACT**

Torres worked for Tyson for over 17 years on a production line. She described her duties as routinely pushing carts of meat weighing up to 600 pounds to a conveyor belt. She would bend over into the cart and unload the meat from the cart to the conveyor belt. She stated the average cut of meat weighed about 10 pounds. Torres contends she sustained various injuries due to repetitive work.

Three medical experts provided opinions, including Chris Fevurly, M.D., on behalf of Tyson; Titus Plomaritis, M.D., on behalf of Torres; and David Hufford, M.D., who was appointed by the court. The doctors had differing opinions. Dr. Fevurly opined Torres had underlying progressive arthritis of her entire spine and shoulders, which was the prevailing factor for her problems, although her work caused aggravation of such problem. For Dr. Plomaritis, Torres' repetitive work was the prevailing factor for her injuries.

Dr. Hufford noted Torres' work likely caused her to have pain and wore her out. Dr. Hufford's impression was Torres had diffuse polymyalgias and polyarthralgias lacking a temporal relationship, with evidence of active synovitis at the MCP joints into fingers of

each hand. Regarding prevailing factor, Dr. Hufford stated Torres likely had an underlying rheumatologic condition, including the possibility of rheumatoid arthritis, affecting her spine and hands. Dr. Hufford observed Torres' work may have caused her to have spine and shoulder pain. Further, the doctor noted Torres likely had bilateral carpal tunnel syndrome, but work activity was not the prevailing factor, as compared to age and gender. Dr. Hufford stated, "It is impossible to apportion an occupational component to any of her symptoms until she has been evaluated outside of the worker's compensation system for a potential underlying rheumatologic illness such as rheumatoid arthritis."<sup>1</sup>

The judge's Order states:

Based on the report of Dr. Hufford, the claimant's previous request for medical treatment should be and the same is hereby denied. The respondent's request for a finding that the claimant's work activities are not the prevailing factor for her condition can not be made prior to the recommended evaluation being completed.

Tyson argues the judge misconstrued Dr. Hufford's opinion regarding prevailing factor because such physician made it clear he did not believe Torres' alleged repetitive traumas were the prevailing factor for her condition. Tyson requests the Board find Torres' alleged injuries are not compensable.

### **ANALYSIS**

K.S.A. 44-534a(a)(2) states, in part:

A finding with regard to a disputed issue of whether the employee suffered an accident, repetitive trauma or resulting injury, whether the injury arose out of and in the course of the employee's employment, whether notice is given, or whether certain defenses apply, shall be considered jurisdictional, and subject to review by the board. . . . Except as provided in this section, no such preliminary findings or preliminary awards shall be appealable by any party to the proceedings, and the same shall not be binding in a full hearing on the claim, but shall be subject to a full presentation of the facts.

The judge did not make a ruling concerning prevailing factor or any of the jurisdictional issues listed in K.S.A. 44-534a(a)(2). The Board does not have jurisdiction to review issues not addressed in the ALJ's Order.<sup>2</sup> Consequently, Tyson's appeal is dismissed.

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<sup>1</sup> P.H. Trans. (June 16, 2020), Ex. 2 at 2.

<sup>2</sup> See *Jones v. City of Lawrence*, No. 1,079,209, 2017 WL 1825153 (Kan. WCAB Apr. 18, 2017) and *Fornes v. Junction City Wire Harness*, No. 1,072,953, 2015 WL 3642466 (Kan. WCAB May 22, 2015).

**CONCLUSION**

The Board lacks authority to review what is essentially a non-ruling. The appeal is dismissed.

**WHEREFORE**, the Board dismisses the appeal of the Order dated June 16, 2020.

**IT IS SO ORDERED.**

Dated this \_\_\_\_\_ day of August, 2020.

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HONORABLE JOHN F. CARPINELLI  
BOARD MEMBER

Electronic copies via OSCAR to:

Scott Mann

Gregory Worth

Honorable Pamela Fuller